
Appeal Decision

Site visit made on 20 September 2016

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 October 2016

Appeal Ref: APP/U1105/W/16/3151800

19-20 Fore Street, Sidmouth, Devon EX10 8AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Shirley Sargent of Utopia against the decision of East Devon District Council.
 - The application Ref 14/2994/FUL, dated 12 December 2014, was refused by notice dated 4 November 2015.
 - The development proposed is described as "construction of a pair of semi-detached houses to replace studio flat in annexe".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice refers to the adopted East Devon Local Plan 2006 and the emerging East Devon Local Plan. Since the application was decided, the emerging Local Plan has been adopted. Therefore, the East Devon Local Plan 2013-2031 (adopted January 2016) (the Local Plan) now forms the development plan for the District. I have determined the appeal on this basis.
3. The building at 19-20 Fore Street is a grade II listed building. At the rear there is a yard containing a single story building set against the stone boundary wall, which is the subject of this appeal. The Council has advised that it considers the appeal building to be listed, as it forms part of the curtilage to Nos 19-20, and listed building consent would be required for the proposed development. It is not for me to consider whether such consent is required and no application is before me for determination. Nonetheless, I have taken into account in my determination of the appeal the relationship of the building that would be demolished, and the proposed building that would replace it, with the main part of Nos 19-20.

Main Issue

4. The main issues are:
 - Whether the development would be at risk of flooding, and if so, if it is possible for the development to be located in zones with a lower probability of flooding;
 - The effect of the development on designated heritage assets in the vicinity, particularly the Conservation Area and the listed buildings at 18,19 and 20 Fore Street;
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- The effect of the development on the living conditions of future occupiers and nearby residents.

Reasons

Flood Risk

5. The appeal site lies within Flood Zones 2 and 3 defined by the Environment Agency (EA) as having a medium/high probability of flooding. The EA advises that the site of the proposed dwellings, which are considered a 'more vulnerable' development, is recorded as having flooded in 1960 and was on the western edge of the flooded area in 1968. These floods followed periods of intense rainfall over the high ground around the catchment area to the north. The River Sid, which lies approximately 150m to the east of the site, is regarded as a 'Rapid Response Catchment' by the EA due to its steepness and rapid response to rainfall.
6. A flood alleviation scheme has been built to afford a 1 in 100 year standard of protection against river flooding. The site lies within the defended area which is still affording this standard of protection. However, any failure of the flood alleviation scheme would put the appeal site at risk of flooding and evidence shows a failure would not be unlikely. After high rainfall in 2012, a large section of the river wall collapsed into the river.
7. Although the site is outside the tidal risk zone, coastal flood risk also needs to be considered. The EA advises that the coastal defences, constructed in the 1990s, do not prevent large volumes of sea water overtopping the river defences in storm conditions. This water drains into lower parts of the town close to the appeal site and would contribute to any surface and river flooding in the defended area.
8. It is important that the effect of climate change upon river flows and future sea levels is taken into account, particularly for more vulnerable development in areas at risk of flooding. The EA advises that, due to predicted rises in sea level and peak river flows, it is likely that the proposed houses would be at frequent risk of flooding from coastal, river, ground water and surface water sources by 2116.
9. The appellant's site specific flood risk assessments (February 2015 and April 2016) do not provide evidence to dispute the flood risk to the site, although there is detail on mitigation measures. Therefore, on the basis of the evidence before me, I agree with the EA's assessment, that there is a medium/high probability of the development flooding within its lifetime. Consequently, the Sequential Test as required by the National Planning Policy Framework (the Framework) is necessary to determine if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
10. The appellant advises that there is no alternative site, as she may live in one of the dwellings in order to manage her adjoining hair salon business more efficiently. The other house may be used as holiday accommodation. However, the need for the appellant to live near the business has not been demonstrated as it is likely that there is other suitable accommodation in the area. Also, there is no justification for the holiday accommodation on the site and it has not been demonstrated that there is not an alternative site for this use.

11. To conclude on this issue, I find that the development would be at risk of flooding within its lifetime. It has not been demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Therefore, the proposal would fail the Sequential Test set out in the Framework and would not accord with Policy EN21 of the Local Plan. The development would not meet the aims of Strategy 6 of the Local Plan which seeks, amongst other things, to avoid development that would adversely affect the risk of flooding.

Character and Appearance

12. The site is within the Sidmouth Town Centre Conservation Area which retains much of its Regency and Victorian character. The significance of this part of the Conservation Area can be attributed to a number of traditional shop fronts which date from the mid to late 19th Century. Many of the buildings containing shop fronts, including Nos 18, 19 and 20 Fore Street, are listed buildings and are significant due to their group value. The roofs of the historic buildings at Nos 18-20 are particularly visible in views from the east. The use of traditional roofing materials, such as slate with decorative ridge tiles, contributes to the character and appearance of the Conservation Area.
13. The appeal building is located within the rear yard and, aside from the modern extensions, is of a later construction than Nos 19-20. The rear wall of the appeal building is formed by the stone boundary wall which may well be a remnant of the historic boundary. Aside from the rear stone wall, there is little of significance about the building itself. As the building is located within the rear yard, only the rear wall is visible within the wider Conservation Area. However, the building is in relatively close proximity to the listed building at No 18 Fore Street, and the main part of Nos 19-20, and any re-development would affect their setting.
14. The proposal seeks to replace the single story building with a pair of semi-detached houses, whilst incorporating the existing stone wall into the new front elevations. The scale and mass of the buildings would have considerably more impact than the existing building and the development would dominate the adjoining buildings. At present, there are views from the east towards the rear of the listed buildings on Fore Street which would be obscured by the development. Whilst the principal elevations of the listed buildings are more significant in terms of the Conservation Area, the rear elevations are part of the area's character, particularly the roofscape, which would be hidden by the development.
15. I appreciate that the site adjoins Trumps Court and is close to other relatively modern developments that do not add value to the character and appearance of the Conservation Area. I also consider that the design of the development is not without architectural merit. However, in this context, due to its scale and mass, I find that the development would fail to preserve the setting of the nearby listed buildings, and would not preserve or enhance the character and appearance of the Conservation Area in accordance with Policies EN9 and EN10 of the Local Plan.

Living Conditions

16. The proposed houses would abut a private car parking area used by the residents of Trumps Court. Occupiers of the dwellings would access their front doors by crossing the car parking area, as there is insufficient space for a segregated footpath. The proposed means of pedestrian access would be inconvenient for future occupiers, especially parents with pushchairs or people carrying bags, who would have to negotiate their way through parked cars to reach their front doors. This would lead to an unacceptable standard of living conditions.
17. The houses would be sited relatively close to the residential development at Trumps Court. This has a number of first floor windows to main habitable rooms which would face the dormer windows on the front elevation of the development. Due to the relative positions of the windows, it is highly likely that there would be overlooking between the developments. Although there is an existing level of overlooking from the car parking area towards the ground floor windows of Trumps Court, the first floor windows are more private. Consequently, the development would lead to a loss of privacy to the residents at Trumps Court.
18. The Council is also concerned about overlooking of Caxton House, however, this is located at the side of the proposed development which would be a blank gable wall. At the time of my site visit, the accommodation above Nos 19 and 20 Fore Street appeared to be in use as ancillary storage. Whilst there is a large window facing the proposed development, there is no evidence that the development would lead to a loss of privacy.
19. I have considered the Council's concerns about the overbearing impact of the development. However, I do not find that the development would have a significant impact on neighbour's living conditions due to over-dominance. However, this does not overcome the harm resulting from loss of privacy as described above.
20. To conclude on this issue, I find that the development would not provide suitable living conditions for future occupants due to the access arrangements. It would also lead to a loss of privacy to the residents of Trumps Court. Consequently, the development would not accord with Policy D1 of the Local Plan which seeks to protect the amenity of adjoining occupiers. The proposal would not meet the aims of the Framework insofar as it seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

21. I note that a Unilateral Undertaking, under Section 106 of the Town and Country Planning Act 1990, has been submitted to secure a financial contribution towards mitigating the impacts of development on the Pebblebed Heaths Special Protection Area. However, as I found that the development would be unacceptable for the reasons given above, it is not necessary for me to consider whether the Unilateral Undertaking would meet the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 204 of the Framework.

Conclusion

22. I conclude that the development would lead to harm, as described above.

Whilst, the harm to the significance of the designated heritage assets would be relatively localised, and therefore less than substantial in terms of the national policy, I give great weight to the conservation of the listed buildings and the Conservation Area. There are limited clear public benefits that would outweigh the harm in this instance.

23. For the reasons set out above, the appeal should be dismissed.

Debbie Moore

Inspector